

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TIGER ACCESSORY GROUP, L.L.C.,
an Illinois Limited Liability Company,

Plaintiff,

v.

PILOT AUTOMOTIVE, INC., a
California Corporation

and

WANG'S INTERNATIONAL, INC., a
California Corporation,

Defendants.

**PLAINTIFF'S REPLY TO
DEFENDANTS' AMENDED
COUNTER-CLAIMS**

Case No. 07 CV 6825

Judge William J. Hibbler
Magistrate Maria Valdez

Plaintiff Tiger Accessory Group, L.L.C. (hereinafter "Plaintiff" or "TAG") by its attorneys, hereby replies to the amended counter-claims of March 14, 2008 by Defendants, Pilot Automotive, Inc. and Wang's International, Inc. (collectively "Defendants" or "Pilot") as follows:

Amended Counter-Claim Paragraph 1: These counter-claims are asserted against Plaintiff/Counter-Defendant, Tiger Accessory Group L.L.C. (Plaintiff), and arise under the Trademark Act, 15 U.S.C. §1051 *et seq.*, and, therefore, are asserted through the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202. As a result of the Amended

Complaint filed by Plaintiff against Defendants, there is currently an actual controversy between the parties. This Court has jurisdiction under 28 U.S.C. §§1331 and 1338.

Amended Answer Plaintiff admits the allegations of paragraph 1 of the amended counter-claims.

Amended Counter-Claim Paragraph 2: Venue properly lies in this judicial district under the provisions of 28 U.S.C. §1391.

Amended Answer Plaintiff admits the allegations of paragraph 2 of the amended counter-claims.

Count 1 – Declaratory Judgment – U.S. Trademark Reg. No. 1,488,309

Amended Counter-Claim Paragraph 3: There is a justiciable controversy concerning the validity and infringement of U.S. Trademark Registration No. 1,488,309, and any rights claimed in the “Baja” mark identified therein under state and common law as set forth in the Amended Complaint and the Amended Answer to which this counter-claim is appended.

Amended Answer Plaintiff admits the allegations of paragraph 3 of the amended counter-claims that there is a justiciable controversy concerning U.S. Trademark No. 1,488,309, but denies that Defendants are entitled to any relief based on the allegations set forth in paragraph 3.

Amended Counter-Claim Paragraph 4: Plaintiff has asserted that U.S. Trademark Registration No. 1,488,309 was duly and legally issued, that it has accrued rights in the “Baja” mark identified therein under state and common law and that Defendants’ use of “Baja Champions” when applied to automotive lighting products infringes such rights.

Amended Answer Plaintiff admits the allegations of paragraph 4 of the amended counter-claims.

Amended Counter-Claim Paragraph 5: On information and belief, U.S. Trademark Registration No. 1,488,309 and any rights in the “Baja” mark identified therein allegedly accrued by Plaintiff under federal, state and/or common law are invalid as failing to comply with the provisions of 15 U.S.C. §§1051 *et seq.* and/or the common law.

Amended Answer Plaintiff denies each and every allegation contained in paragraph 5 of the amended counter-claims.

Amended Counter-Claim Paragraph 6: Defendants have not infringed nor are they now infringing U.S. Trademark Registration No. 1,488,309 and any rights in the “Baja” mark identified therein allegedly accrued by Plaintiff under federal, state and/or common law.

Amended Answer Plaintiff denies each and every allegation contained in paragraph 6 of the amended counter-claims.

Amended Counter-Claim Paragraph 7: On information [sic] and belief, U.S. Trademark Registration No. 1,488,309 is unenforceable due to the actions or inactions of Plaintiff and/or its predecessors.

Amended Answer Plaintiff denies each and every allegation contained in paragraph 7 of the amended counter-claims.

Amended Counter-Claim Paragraph 8: Therefore, there exists an actual controversy between the parties as to the validity and infringement of U.S. Trademark Registration No. 1,488,309 and any rights in the “Baja” mark identified therein allegedly accrued by Plaintiff under federal, state and/or common law, with respect to which Defendants requests [sic] a declaratory judgment in its [sic] favor.

Amended Answer Plaintiff admits that there exists an actual controversy as to U.S. Trademark Registration No. 1,488,309, but denies that Defendants are entitled to any relief based on the allegations set forth in paragraph 8 of the amended counter-claims.

Count 2 – Declaratory Judgment – U.S. Trademark Reg. No. 1,488,304

Amended Counter-Claim Paragraph 9: There is a justiciable controversy concerning the validity and infringement of U.S. Trademark Registration No. 1,488,304, and any rights claimed in the “Baja Tough” mark identified therein under state and common law as set forth in the Amended Complaint and the Amended Answer to which this counter-claim is appended.

Amended Answer Plaintiff admits that there exists an actual controversy as to U.S. Trademark Registration No. 1,488,304, but denies that Defendants are entitled to any relief based on the allegations set forth in paragraph 9 of the amended counter-claims.

Amended Counter-Claim Paragraph 10: Plaintiff has asserted that U.S. Trademark Registration No. 1,488,304 was duly and legally issued, that it has accrued rights in the “Baja Tough” mark identified therein under state and common law and that Defendants’ use of “Baja Champions” when applied to automotive lighting products infringes such rights.

Amended Answer Plaintiff admits the allegations of paragraph 10 of the amended counter-claims.

Amended Counter-Claim Paragraph 11: On information and belief, U.S. Trademark Registration No. 1,488,304 and any rights in the “Baja Tough” mark identified therein allegedly accrued by Plaintiff under federal, state and/or common law are invalid as failing to comply with the provisions of 15 U.S.C. §§1051 *et seq.* and the common law.

Amended Answer Plaintiff denies each and every allegation contained in paragraph 11 of the amended counter-claims.

Amended Counter-Claim Paragraph 12: Defendants have not infringed nor are they infringing U.S. Trademark Registration No. 1,488,304 and any rights in the “Baja Tough” mark identified therein allegedly accrued by Plaintiff under federal, state and/or common law.

Amended Answer Plaintiff denies each and every allegation contained in paragraph 12 of the amended counter-claims.

Amended Counter-Claim Paragraph 13: On information and belief, U.S. Trademark Registration No. 1,488,309 [sic] is unenforceable due to the actions or inactions of Plaintiff and/or its predecessors.

Amended Answer Plaintiff denies each and every allegation contained in paragraph 13 of the amended counter-claims.

Amended Counter-Claim Paragraph 14: Therefore, there exists an actual controversy between the parties as to the validity and infringement of U.S. Trademark Registration No. 1,488,304 and any rights in the mark identified therein allegedly accrued by Plaintiff under federal, state and/or common law, with respect to which Defendants requests [sic] a declaratory judgment in its [sic] favor.

Amended Answer Plaintiff admits that there exists an actual controversy as to U.S. Trademark Registration No. 1,488,304, but denies that Defendants are entitled to any relief based on the allegations set forth in paragraph 14 of the amended counter-claims.

WHEREFORE, TAG denies that Defendants are entitled to the relief sought and respectfully requests that this Court adjudge and decree that:

- (1) Defendants' amended counter-claims be dismissed with prejudice;
- (2) Judgment be entered in favor of Plaintiff on all Counts; and
- (3) Plaintiff be awarded further and additional relief, including costs, and interest where appropriate, as this Court deems just and proper.

Dated: April 7, 2008

GREER, BURNS & CRAIN, LTD.

By: s/ Anuj K. Wadhwa
Lawrence J. Crain
Anuj K. Wadhwa

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing PLAINTIFF'S
REPLY TO DEFENDANTS' AMENDED COUNTER-CLAIMS was filed via the Case
Management/Electronic Case Filing (CM/ECF) System of the U.S. District Court for the
Northern District of Illinois pursuant to L.R. 5.9 on the 7th day of April 2008.

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